IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 695 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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USHABEN W/O MUKESHBHAI BAROT - Applicant(s)

Versus

STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :

MR HN BRAHMBHATT for Applicant(s) : 1,
MR KC SHAH ADDL PP for Respondent(s) : 1,
MR AM PAREKH for Respondent(s) : 2 - 6.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 22/09/2005

ORAL JUDGMENT

1.The petitioner has preferred this petition under Article 226 of the Constitution of India praying that

the Criminal Case No. 7440 of 2003 pending before the learned 3rd J.M.F.C. Mehsana be transferred to the Court of J.M.F.C., Ahmedabad (Rural), Ahmedabad on account of hardship, which is facing in attending the court at Mehsana. This Court (Coram: A.M. Kapadia, J.) vide order dated 16.7.2004 issued Rule and granted ad-interim relief. The same is continued thereafter.

2. The petitioner has submitted that she was compelled to file a complaint on 15.11.2003 at Sola Police Station, Ahmedabad city against the respondents accused under Sections 498-A, 506(2) and 114 of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act. The said complaint was transferred to Lagnaj Police Station for investigation. The charge sheet has been filed against the respondents accused before 3rd J.M.F.C. At Mehsana.

3. The petitioner has submitted that she was compelled to take shelter with her parents, who are residing with her brother, who is eking out his leaving and supporting family by running a small pan shop at Ahmedabad. The petitioner has a minor child aged 4 years. The petitioner is thus, residing with her parents and brother with her minor child at Ahmedabad. The counsel appearing for the petitioner has submitted

that she is not getting any maintenance from her husband – present respondent No. 2. The counsel for the petitioner has submitted that the witnesses are residing at Ahmedabad and petitioner does not have sufficient mince to prosecute her complaint at Mehsana. The petitioner being a lady, required to be accompanied by some male member whenever she is required to attend the court at Mehsana. The counsel for the petitioner has relied upon the decision of the Apex Court in case of **ARCHANA SINGH VS. ALOK PRATAP SINGH,** reported in 2000 (7) Supreme 560 in support of his submission for transfer on account of hardship. The petitioner has also relied upon the decision of this court in case of **RAJESHREEBEN DHARMENDRABHAI PATADIA VS. STATE OF GUJARAT** in Criminal Misc. Application No. 1168 of 2001, wherein, this court (Coram: S.K. Keshote, J.) in his decision dated 27.3.2001 has allowed the transfer on account of hardship to a lady in prosecuting the said complaint of such nature.

4. Shri Parekh, learned counsel appearing for the respondents could not controvert the submissions made on behalf of the petitioner. No affidavit resisting the petition is filed. Shri Parekh has submitted that on transfer of case to Ahmedabad, the husband will put to

inconvenience. Shri Parekh, learned counsel for the husband could not cogently pointed out as to what inconvenience is likely to be caused to the husband.

5. Shri Shah, learned Addl.P.P. submitted that if in case the court is inclined to pass an order of transfer of the matter, then, it may be ensured that the case may not be delayed on account of such transfer.

6. This court has gone through the material on record and heard the counsel of the respective parties at length. The provision of Section 407(1)(c) of the Code of Criminal Procedure, 1973 provides transferring of the cases to ensure the proper conducting of the matter and for mitigating inconvenience caused to the parties.

7. The decision of the Apex Court in case of Archana Singh (Supra) is ofcourse in respect of divorce petition by the husband, however, the reasoning mentioned by the Apex Court can well be said to be available in respect of the wife prosecuting the criminal complaint. The facts of the case in the decision of this court in case of Rajeshreeben (Supra) are similar of the instant case. This court in case of Rajeshreeben (Supra) has considered the hardship caused to the wife complainant in prosecuting the case.

8. The hardship enlisted by the petitioner in her

petition and narrated by the counsel at bar, could not be effectively controverted by the learned counsel for the respondents. It is needless to say that it shall be endevour of court to see that the criminal case may not be thwarted on account of any undue hardship on the part of the complainant. The transfer of the case to Ahmedabad is not likely to cause great hardship and inconvenience to the respondents. As against this, the hardships narrated by the petitioner wife-complainant sufficiently indicate that the continuation of case at Mehsana would certainly work hardship upon the complainant. In view of this, the balance tilts in favour of the petitioner wife. In view of this, the court is inclined to exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India in favour of the petitioner wife.

9. In the result, the present petition is allowed. The Criminal Case No. 7440 of 2003 pending in the Court of 3rd J.M.F.C. Mehsana is ordered to be transferred to the Court of J.M.F.C., Ahmedabad (Rural), Ahmedabad. Rule is made absolute. Direct service permitted.

(S.R.BRAHMBHATT, J.)

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